

UNITED STATES OF AMERICA)	
)	
)	
)	Government Response
)	To Defense Motion for Appropriate Relief
)	
v.)	Order for Appointment and Funding of
)	Requested Defense Expert Consultant Dr.
)	[REDACTED] in the Field of Clinical and
)	Forensic Psychology
MOHAMMED KAMIN)	
)	
)	4 September 2008
)	

- a. Mr. Kamin is a native of Afghanistan. [REDACTED] Subsequent to his capture, he came into the custody of the United States government. Since at least November 2004, the date of his Combatant Status Review Tribunal, he has been confined as a detainee at Guantanamo Bay, Cuba (GTMO). Prior to his arrival in GTMO, Mr. Kamin was confined at Bagram Air Base, Afghanistan. *See Transcript of Hearing ICO United States v. Kamin*, May 21, 2008 (Draft), pg. 30.

[REDACTED]

c. Mr. Kamin has been at GTMO, and he has been confined in Camps

d. Camp [REDACTED] is a state-of-the-art, \$16 million facility, completed in May 2004. Its construction was based upon a modern maximum-security design used for U.S. federal penitentiaries. Composed of four wings of 12 to 14 individual cells each, the two-story maximum-security detention and interrogation facility can hold about 100 detainees. [REDACTED]

e. Camp [REDACTED] is a \$37-million facility completed in November 2006. This two story maximum-security detention and interrogation facility can accommodate approximately 160 detainees. See <http://www.jtfgtmo.southcom.mil/mission.html> (accessed August 28, 2008).

f. Mr. Kamin was arraigned on the Charge on 21 May 2008. As he repeatedly stated during the arraignment, Mr. Kamin refused to be represented by his detailed defense counsel. Mr. Kamin also declined to represent himself, *pro se*, and further stated his intent not to attend future proceedings.

g. The Commission ordered LT Federico to represent Mr. Kamin because [REDACTED]
[REDACTED] ” [REDACTED]

h. On 31 July 2008, the defense filed a Motion (**D-06**) seeking an Order from the Commission that detailed defense counsel be permitted on the cellblock to speak directly to Mr. Kamin. This Motion was litigated at a hearings on that same date. During this hearing, [REDACTED], JAGC, USA, Deputy SJA, JTF-GTMO, testified that on that date he spoke with Mr. Kamin in his cell about attending the hearing. [REDACTED]

The Military Judge Denied D-06 on 6 August 2008.

i. Within the detention camps in GTMO, there exist a coordinated effort by detainees to protest their detention and the Military Commissions system.

j. During the arraignment, the trial counsel read the charges against Mr. Kamin. Thereafter, Mr. Kamin began making specific statements rebutting the accusations. In response, the trial counsel requested the Military Judge advise Mr. Kamin of his rights against self-incrimination.

k. On 31 July 2008, the defense filed a Motion (**D-06**) seeking an Order from the Commission that detailed defense counsel be permitted on the cellblock to speak directly to Mr. Kamin. This Motion was litigated at a hearings on that same date. During this hearing, [REDACTED], JAGC, USA, Deputy SJA, JTF-GTMO, testified that on that date he spoke with Mr. Kamin in his cell about attending the hearing. Lt Col Reilly testified, [REDACTED]

The Military Judge Denied D-06 on 6 August 2008

[illegible]

5. Law and Argument:

- a. On 29 August 2008, the Defense submitted three motions to the Commission. Two of these motions addressed the mental health of the Accused. The first was a Defense motion to compel an inquiry under RMC 706 and is addressed by the government in a separate response. The second motion, and the subject of this response, asked the Commission to order the appointment of Dr. [REDACTED] a forensic psychologist. While separate requests, the resolution of these two motions are interrelated.
- b. In the Defense's motion to compel a consultant in forensic psychology, they proffer, generally, the following reasons why an expert is needed at this time:

To conduct a follow-up evaluation to determine whether a previous diagnosis that the Accused did not suffer from [REDACTED] is still accurate. *Def. Mot. for Appropriate Relief* – D009, 29 August 2008, p. 7.

To determine whether the Accused is suffering from a serious mental disorder other than an [REDACTED]. *Id.*

To have a qualified professional evaluate the impact of any psychiatric symptoms the Accused may have on his competence-related abilities. *Id.* at 8.

To determine, if in fact symptoms exist, whether they have increased in severity since the initial evaluation. *Id.*

To determine whether the conditions of detention have had an inverse impact on the Accused's mental health. *Id.*

To determine whether the Accused's rejection of the Commissions system and representation of his detailed military defense counsel is influenced by a mental disease or defect. *Id.* at 9.

To meet their ethical obligation by determining whether the Accused is competent to stand trial, to make a knowing and voluntary waiver of his right to counsel, and to determine whether he suffers from diminished capacity. *Id.*

To possibly challenge the findings of a 706 inquiry. *Id.* at 10.

To provide advice and assistance on how to work with and communicate with the Accused. *Id.*

To be a witness at a pre-sentencing hearing, if necessary.

To have an individual not associated with the United States military evaluate the source of the Accused's perceived hostility against uniformed American service members. *Id.* at 12.

- c. These 11 reasons represent the Defense's rational for why they need an expert consultant in forensic psychology – prior to an inquiry under RMC 706. However, each concern proffered by the Defense – with the exception of the last four – is alleviated by an inquiry under RMC 706. In fact, the rational that the Defense relies upon in their motion to order an RMC 706 inquiry are nearly identical to the rational and concerns expressed in this motion.
- d. An RMC 706 inquiry is held to address precisely the questions and concerns presented by the Defense. According to RMC 706, an inquiry under the rule consists of a board of independent, neutral, licensed physicians. At least one member must be a psychiatrist or clinical psychologist. They are required by operation of law to answer the following questions: 1) At the time of the alleged offense did the Accused suffer from a severe mental disease or defect; 2) What is the clinical psychiatric diagnosis; 3) Was the accused unable to appreciate the wrongfulness of his conduct as a result of a severe mental disease or defect, at the time of the offense; and 4) Is the accused presently suffering from a mental disease or defect rendering him unable to understand the nature of the proceedings against him or to conduct or cooperate intelligently in the defense?
- e. The Defense's request for a forensic psychologist is premature. Any concern regarding whether the Accused is competent to make a knowing and voluntary waiver of his right to counsel, is competent to stand trial, and/or determine whether he suffers from a severe mental disease or defect or from diminished

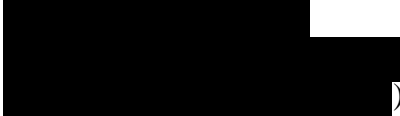
capacity should be governed by the procedures under RMC 706 and 909. RMC 909 is clear that RMC 706 should govern when there is doubt as to the Accused's capacity to act knowingly and intelligently in his own defense or if a party to a Commission believes he may be suffering from a mental illness.

- f. Furthermore, the rule makes clear that other appropriate questions may also be included. These questions may be posed by either side – to include the Defense. If the Defense does not think that the four questions required by regulation will satisfy their concern for their client's mental health and their own ethical obligations, then the Prosecution would not object to the Defense supplementing the questions required by the rule with additional questions that would more specifically address their concerns. In this manner, the Defense could resolve all the appropriate and timely issues identified in their motion to compel. Therefore, there is no need for the Defense to have a consultant in forensic psychology appointed at this time.
- g. Given that the Defense has requested an RMC 706 inquiry, it would be prudent to wait until the inquiry was completed and the board's report was delivered to the Defense before appointing a forensic psychologist – especially when the board will address each of the Defense's concerns. An expert consultant, at this point, would only be duplicative and redundant.
- h. The appropriate time for a request to appoint a consultant in forensic psychology is after the inquiry is completed and the results are delivered to the Defense.¹ Then, depending on the content of the report, a forensic psychologist may or may not be required. It is only at that point that the Defense will truly be able to articulate that they need a consultant to challenge the findings of the board, to provide advice and assistance on how to work with and communicate with the Accused, or to be a witness at a pre-sentencing hearing. Prior to receiving the report, there is simply not enough information to corroborate these additional concerns and to justify a consultant.
- i. It is important to note, the desire to have a civilian appointed because of a perception that the Accused does not trust uniformed military members is not a legitimate rationale to have an expert consultant appointed. In fact, if the Commission determines that the Defense is entitled to a forensic psychologist, then the Prosecution asked for the standard and accepted opportunity to find a qualified Department of Defense substitute.
- j. Finally, until an RMC 706 inquiry is completed, there is simply no evidence in the record that the Accused suffers from any mental disease or defect. The Accused's BSCT record does not indicate he suffered or suffers from a mental illness or

¹ It is important to note that the Defense's concerns regarding confidentiality are also addressed by RMC 706. The rule protects confidentiality of the attorney-client relationship by ensuring that the full report of the board is delivered exclusively to the Defense and that the Prosecution is entitled to only the ultimate conclusions as to the questions specified.

disorder. Furthermore, the Commission determined on 21 May 2008 that the Accused understood his rights and that any waivers he made were done knowingly and voluntarily. It is only out of an abundance of caution that the Prosecution does not object to the RMC 706 inquiry requested by the Defense. The facts in the record, the observations of the Prosecution, and the findings of the Commission suggest that the Accused's waivers and lack of cooperation are the product of deliberate, conscious thought. Unless a board convened under RMC 706 makes a determination that the Accused does in fact suffer from some form of mental disease, defect, or diminished capacity, there is no information in the record to demonstrate an expert is necessary for Accused and counsel to prepare a defense. Again, the Defense request is premature. An expert may become necessary depending on the findings of the board. However, until the board answers the questions under the rule and the additional questions the Defense may present, an expert is not necessary.

7. **Oral Argument.** The Government does not request oral argument. Furthermore, given the completeness of the record – to include the attachments to the motions – the Government objects to oral arguments by either side.
8. **Witnesses.** The Government does not anticipate calling live witnesses in connection with this motion. However, the Government reserves the right to amend this request should the Defense response raise issues that would require the Government to call live witnesses in order to rebut certain information.
9. **Respectfully Submitted by:**

____//signed//_____
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